

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6958 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

FARUK @ BHOLA ANWARBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR ND GOHIL, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/99

ORAL JUDGEMENT

The petitioner, in this writ petition under Article 226 of the Constitution of India, has challenged the order of detention dated 2.7.98, Annexure "B" passed by the Police Commissioner, Ahmedabad City, under section 3(2) of the Prevention of Antisocial Activities Act (for short PASA) declaring him as dangerous person and

considering his activities to be prejudicial for maintenance of public order.

From the grounds of detention, it appears that on the basis of registration of solitary criminal case under section 392 etc. of the Indian Penal Code, which is yet under investigation and from the statements of two confidential witnesses, the Detaining Authority was subjectively satisfied that the petitioner is a dangerous person and his activities were prejudicial for maintenance of public order. As such the impugned order of detention was passed which is under challenge in this writ petition on two grounds.

The first is that the petitioner on the basis of registration of single case could not be described as dangerous person and the second is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

So far as the first contention is concerned, I am not inclined to accept it because it is not only on the basis of single registered case when the petitioner has been branded as dangerous person. The Detaining Authority seems to have considered also the statements of two confidential witnesses giving rise to inference that the petitioner is habitually committing offence punishable under Chapters XVI & XVII of the Code of Criminal Procedure. The registered offence was also under section 25 of the Arms Act. Thus, on this material the petitioner could be said to be a dangerous person.

However, on the activities of the petitioner on the material available before the Detaining Authority, he could not be said to have created situation prejudicial for maintenance of public order. There is nothing in the grounds of detention that in the registered criminal case the activities of the petitioner were prejudicial for maintenance of public order. If it was really so, the investigation could have been completed in right earnest and chargesheet must have been submitted by the police. By now that has not been done. As such this offence cannot be said to have given rise to a situation prejudicial for maintenance of public order.

So far as the statements of two confidential witnesses are concerned, upon careful examination of the extracts of their statements given in the grounds of detention it can hardly be said that these incidents created situations prejudicial for maintenance of public order as understood in common sense and also as

understood under the explanation to section 3(4) PASA.

Since the activities of the petitioner were not prejudicial for maintenance of public order he could not have been preventively detained under section 3(2) of the PASA. The order of detention is therefore rendered illegal and cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 2.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt